

### **REMARKS/ARGUMENTS**

This Amendment is filed in response to the Office action of September 12, 2008. A Request for Continued Examination is being filed concurrently herewith.

With regard to the claims, claims 72, 74 - 89 and 93 - 100 are pending. Claims 89, 93, 95, 97 and 100 were amended. Consideration of claims 72, 74 - 89 and 93 - 100 is requested.

### **Arguments in Response to the Rejected Claims**

Claims 72, 74, 75, 77 - 79, 81 - 87, 89, 93, 95, 96, 98 - 100 were rejected under 35 U.S.C. 102(b) as being anticipated by Griner, U.S. Patent No. 6,917,566. Claims 76, 80, 88, 94 and 97 were rejected under 35 U.S.C. 103(a) as being unpatentable over Griner. Applicant respectfully submits that none of these claims are anticipated or rendered unpatentable by Griner.

As to independent claim 72, this includes the limitation: "the computing device being further configured to create segment files on the first hard drive as the raw event file is being created, *each segment file including a song* performed during the performance." Thus, claim 72 requires that *each* segment file include a song. This is supported in the specification wherein it is disclosed that a segment file can be one song or more than one song. (Appl'n. p. 19, line 21 - p. 20, line 9) On the other hand, the cited portions of Griner do not disclose this limitation. Griner refers to "secondary event files," however they are files that at most constitute a *portion* of one song, and not an entire song. (Griner 6:64)

At page 2 of the Office Action, Griner is cited (at col. 9, lines 17 - 30) for the proposition that the segment files of Griner includes a song. However this cited portion of Griner only discloses that a plurality of segment files (i.e., called "secondary event files" in Griner) are needed to be combined to constitute a song. On the other hand, claim 72 requires that *each* segment file include a song.

The Office Action further states that the segment files themselves are not a structural part of the apparatus, so this limitation “does not define anything more to the fact that there are segment files (secondary event files of Griner.)” However claim 72 requires that the computing device be configured to create segment files on the first hard drive. Thus this limitation is part of the apparatus. In view of the foregoing, therefore, this claim 72 limitation is not met by the cited portions of Griner.

Moreover claim 72 includes the limitation: “a backup recorder coupled to the input processor, the backup recorder including a second hard drive for *storing a copy of the processed audio signal*.” The cited portions of Griner do not disclose this limitation. Griner discloses a backup module 410. However this module 410 is for storing the *original* audio signal. (Griner 6:26) The processed audio signal of claim 72, on the other hand, is the signal that is sent from the input processor 12 to the computing device 16. (Appl'n. p. 19, lines 5 - 20)

At page 3 of the Office Action it is stated that Griner (at col. 6, lines 33 - 35) discloses that the backup recorder “can record the audio signals before they are processed by processor 131 or after they are processed by 131.” However the cited portion of Griner does not say that the backup recorder *records* after these steps. The cited portion of Griner merely discloses that the secondary backup file is *used* after these steps. In context, Griner indicates that the secondary backup file is used by being inserted as part or all of the signal going into or out of the signal processor 131. On the other hand, FIG. 1 of Griner shows that it is the original audio signal that is being backed up.

Accordingly for at least the foregoing two reasons, claim 72 is not anticipated by Griner, and withdrawal of the rejection to this claim is requested.

Dependent claims 74 - 80 which depend, directly or indirectly from independent claim 72, and incorporate all of the limitations of this claim, include additional limitations. Thus for these reasons and for the reasons discussed above, Applicant submits that dependent claims 74 - 80 patentably distinguish over Griner. Furthermore, these dependent claims are directed to additional patentable combinations of features and are allowable on those bases as well. The Office Action has included various comments concerning the obviousness or lack of novelty of certain features of the present inventions. Applicant respectfully disagrees. Applicant has addressed those comments directly hereinabove or they are deemed moot in

view of the above responses. Withdrawal of the rejections to these dependent claims is requested.

Independent claim 81 includes the limitation: “the computing device being further configured to create segment files . . . , *each segment file including a song* performed during the performance.” For the same reasons as set forth above in connection with the similar limitation of claim 72, Applicant submits that this limitation of claim 81 is not disclosed by the cited portions of Griner. Therefore the rejection to claim 81 should be withdrawn.

Dependent claims 82 - 88 which depend, directly or indirectly from independent claim 81, and incorporate all of the limitations of this claim, include additional limitations. Thus for these reasons and for the reasons discussed above, Applicant submits that dependent claims 82 - 88 patentably distinguish over Griner. Furthermore, these dependent claims are directed to additional patentable combinations of features and are allowable on those bases as well. The Office Action has included various comments concerning the obviousness or lack of novelty of certain features of the present inventions. Applicant respectfully disagrees. Applicant has addressed those comments directly hereinabove or they are deemed moot in view of the above responses. Withdrawal of the rejections to these dependent claims is requested.

Independent claim 89 includes the limitation: “the computing device being further configured to create segment files . . . , *each segment file including a song* performed during the performance.” For the same reasons as set forth above in connection with the similar limitations of claim 72 and 81, Applicant submits that this limitation of claim 89 is not disclosed by the cited portions of Griner. Thus the rejection should be withdrawn.

Claim 89 as amended further includes the limitation: “the computing device . . . is further configured to download the formatted segment files via the network.” At page 3 of the Office Action, it is stated that the limitation “for downloading via the network” is just interpreted to be functional language. While Applicant respectfully disagrees with this reason for rejection, claim 89 nevertheless was amended to overcome the rejection in order to advance the prosecution of this application. No portion of Griner has been cited for disclosing this limitation.

Accordingly for at least the foregoing two reasons, claim 89 is not anticipated by Griner, and withdrawal of the rejection to this claim is requested.

Dependent claims 93 - 97 which depend, directly or indirectly from independent claim 89, and incorporate all of the limitations of this claim, include additional limitations. Thus for these reasons and for the reasons discussed above, Applicant submits that dependent claims 93 - 97 patentably distinguish over Griner. Furthermore, these dependent claims are directed to additional patentable combinations of features and are allowable on those bases as well. The Office Action has included various comments concerning the obviousness or lack of novelty of certain features of the present inventions. Applicant respectfully disagrees. Applicant has addressed those comments directly herein or they are deemed moot in view of the above responses. Withdrawal of the rejections to these dependent claims is requested.

There are additional grounds in support of the patentability of claim 93. This claim as amended includes the limitation: "the computing device is configured to operate a website on the network." At page 4 of the Office Action, the claim was rejected on the grounds that the phrase "that operates a website on the network" is directed to the intended use in a method sense. While Applicant respectfully disagrees with this reason for rejection, claim 93 nevertheless was amended to overcome the rejection in order to advance the prosecution of this application. No portion of Griner has been cited for disclosing this limitation, as amended. The rejection therefore should be withdrawn.

There are additional grounds in support of the patentability of claims 95 and 96. Claim 95 as amended includes the limitation: "the computing device is configured to automatically process payments and provide information for use in downloading a copy of the recording during the performance, wherein the information is automatically provided in exchange for the payments." At page 5 of the Office Action, the claim is rejected on various grounds, including that "processing payment" can include a person using a computer as a calculator, and that the phrase "in exchange for information . . . the performance" does not recite structure. While Applicant respectfully disagrees with these reasons for rejection, claim 95 nevertheless was amended to overcome the rejection in order to advance the prosecution of this application. No portion of Griner has been cited for disclosing this limitation, as amended. The rejection to claim 95 therefore should be withdrawn. Because claim 96 depends from claim 95, the rejection to claim 96 also should be withdrawn as it includes all of the limitations of claim 95.

There are additional grounds in support of the patentability of claim 96. This claim includes the limitation: "wherein the information includes an account number and password." No portion of Griner has been cited for disclosing this limitation. Rather, the Office Action rejects this on the basis that it constitutes non-functional, descriptive material. However when information, account numbers or passwords are used in connection with or are being processed by a computer, such claim limitations are not considered non-functional, descriptive material. The rejection of claim 96 therefore should be withdrawn for this reason as well.

Independent claim 98 includes the limitation: "the master recorder being configured to copy the *processed audio signal* onto a master CD." The processed audio signal referenced in this claim is the signal that is outputted from the input processor which in turn is configured to receive the original audio signal from a front of house console. No portion of Griner has been cited for disclosing this limitation. At page 3 of the Office Action, it is stated that the master recorder is directly coupled to the input processor *via the editing module*. However this does not address the requirement that a processed audio signal (i.e., a signal as outputted from the input processor) is copied directly onto a master CD. Therefore the rejection to claim 98 should be withdrawn.

Dependent claims 99 - 100 which depend, directly or indirectly from independent claim 98, and incorporate all of the limitations of this claim, include additional limitations. Thus for these reasons and for the reasons discussed above, Applicant submits that dependent claims 99 - 100 patentably distinguish over Griner. Furthermore, these dependent claims are directed to additional patentable combinations of features and are allowable on those bases as well. The Office Action has included various comments concerning the obviousness or lack of novelty of certain features of the present inventions. Applicant respectfully disagrees. Applicant has addressed those comments directly herein or they are deemed moot in view of the above responses. Withdrawal of the rejections to these dependent claims is requested.

There are additional grounds in support of the patentability of claim 100. This claim as amended includes the limitation: "the master recorder includes a storage device for storing segments of the processed audio signal in segment files which are copied onto the master CD, wherein *each segment file includes a song* performed during the performance." For the same reasons as set forth above in connection with the claim 72 limitation pertaining to the

requirement that each segment file include a song, Applicant submits that this limitation of claim 100 is not disclosed by the cited portions of Griner. Therefore the rejection to claim 100 should be withdrawn.

### ***CONCLUSION***

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Specifically, Applicant reserves the right to pursue the subject matter of canceled claims 1 - 71, 73 and 90 - 92, as well as other subject matter within the application, in one or more continuing applications. Accordingly, reviewers of this or any child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

For all the reasons advanced above, Applicant submits that the application is in a condition for allowance and that action is earnestly solicited.

Respectfully submitted,

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